IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

Criminal Revision No. 29 of 2001.

Date of Decision: November 6 **, 2006**.

Yog Raj .....Petitioner.

Versus

State of H.P. ……Respondent.

Coram

The Hon'ble Mr. Justice V.K. Gupta, Chief Justice.

Whether approved for reporting?[1] *Yes*

For the Petitioner: Mr.Ajay Sharma, Advocate.

For the Respondent: Mr. C.B. Singh, Dy. Advocate General.

V.K. Gupta, C. J.:

This Criminal Revision Petition under Sections 397 and 401, read with Section 482 of the Code of Criminal Procedure has been filed by the petitioner against the judgment dated 23rd January, 2001 passed by the learned Sessions Judge, Una in Criminal Appeal No. 4 of 1997 whereby the said criminal appeal filed by the petitioner- accused against the judgment dated 17th January, 1997 passed by the learned Judicial Magistrate Ist Class, Una in case No. 69-III of 1992 has been dismissed

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

and the conviction as well as sentence against the petitioner has been upheld by the learned Sessions Judge exercising his appellate jurisdiction.

The petitioner was prosecuted for committing offence punishable under Section 16(1)(a)(i) read with Section 7(i) of the Prevention of Food Adulteration Act, 1954 (1954 Act: for short) and consequent upon his conviction under the aforesaid offence by the trial Magistrate was sentenced to undergo simple imprisonment for three months and also to pay a fine of Rs.500/-, in default whereof to undergo further simple imprisonment for one month. The said prosecution of the petitioner had arisen out of the charge against him that the milk which he was selling was adulterated. It was on 8th May, 1992 at about 9.30 a.m. that the Food Inspector after purchase from the petitioner took the sample of the milk, divided it into three equal parts and put these three equal parts of milk into three bottles which were properly corked, labeled and sealed. After observing all the requisite formalities and the preparation of the *Panchnama,* one part of the sample of milk contained in one such bottle in a sealed packet was sent to Public Analyst, Chandigarh whose report was received through the Local Health Authority, Una. This report of the Public Analyst had found that the milk contained in the said sample was adulterated. As per the report of the Public Analyst, the milk sample contained milk-fat 3.1 % and milk-solids-not-fat 4.7%. As per the opinion of the Public Analyst, the sample was deficient in milk-fat by 11.0% and in milk-solids-not-fat by 45.0% of the minimum prescribed standards.

During the course of the proceedings of the trial before the learned Judicial Magistrate the petitioner moved an application with a prayer for sending the second part of the sample for analysis from

Central Food Laboratory (CFL) but even though his said application was rejected by the learned trial Magistrate, on the same being allowed by the learned Sessions Judge, Una, the second part of the sample was sent to CFL. Director, CFL sent communication No. FT/AQCL/PFA (405)/95 dated 18th December, 1995 addressed to the Judicial Magistrate Ist Class, Una whereby and where along the report of CFL was sent, the same being Certificate No. 405/PFA/95. This report dated 18th December, 1995 was duly received in the trial court on 26th December, 1995 i.e. much before the conclusion of the trial. As per this report of CFL, the sample contained milk fat, 3.0% and milk-solid-not-fat, 5.4%. In the opinion of the CFL the sample did not conform to the standards laid down for cow's milk in as much as the milk-fat contents fell below the minimum requirement of 3.5% and milk-solid-not-fat contents fell below the minimum requirement of 8.5%.

Sub-section (5) of Section 13 of 1954 Act reads thus:-

> "(5) Any document purporting to be a report signed by a public analyst, unless it has been superseded under sub-section(3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory may be used as evidence of the facts stated therein in any proceeding under this Act or under sections 272 to 276 of the Indian Penal Code (45 of 1860):
>
> Provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory not being a certificate with respect to the analysis of the part of the sample of any article of food referred to in the proviso to sub-section (1-A) of Section 16 shall be final and conclusive evidence of the facts stated therein. ….."

In view of the aforesaid clear statutory provision that any report signed by the Director of CFL may be used as evidence of the facts stated therein in any proceeding under 1954 Act, it was not at all required that the aforesaid report should have been formally got proved and/ or formally admitted into evidence. The fact that this report was not got formally proved or that this report had not been formally admitted into evidence did not make any difference in so far as the contents of the report are concerned in view of the aforesaid clear, unambiguous and binding statutory stipulation contained in sub-section(5) of Section 13 of 1954 Act.

A perusal of the judgment of the learned trial Magistrate as well as the judgment of the learned Sessions Judge exercising appellate jurisdiction clearly reveals, beyond any doubt that both the Courts below have based the conviction of the petitioner solely upon the report of the Public Analyst and have not taken into account or considered the report of Director, CFL at all. Actually, both the Courts below on account of a manifest error of law discarded the report of the Director, CFL, in as much as in the erroneous opinion of both the learned Courts below since this report had not been formally got proved or had not been formally admitted into evidence, it could not have been relied upon in the aforesaid proceedings.

Sub-section (3) of Section 13 of 1954 Act reads thus:-

> "(3) The certificate issued by the Director of the Central Food Laboratory under sub-section (2-B) shall supersede the report given by the public analyst under sub-section (1)."

The aforesaid sub-section (3) of Section 13 of 1954 Act in most unambiguous terms clearly stipulates as well as mandates that the certificate issued by the Director, CFL under sub-section (2-B) of Section 13 shall supersede the report given by the Public Analyst under sub-section (1) of the said Section 13. Undoubtedly, the second part of the sample was sent to the Director, CFL by the Court while exercising its jurisdiction and power under sub-section (2-B) of Section 13. The certificate from the Director, CFL dated 18th December, 1995 was thus issued by it in terms of sub-section (3) (supra) which was duly received by the learned trial Court on 26th December, 1995. This certificate therefore superseded the report given by the Public Analyst (Ex.P-8). The learned Courts below however based the conviction of the petitioner solely upon Ex.P-8 which was a clear violation of sub-section (3) (supra).

I have perused the statement of the petitioner- accused recorded by the trial Magistrate in terms of Section 313 Cr.P.C. and find that the report dated 18th December, 1995 from the Director, CFL or its contents or any part thereof were not put to the accused. The report of the Public Analyst (Ex.P-8) alone as well as the contents thereof were put to the petitioner- accused in the course of the aforesaid statement. The trial of the petitioner- accused had thus clearly got vitiated because of a patent illegality having been committed in the course of the said trial in as much as, even though the petitioner's conviction was based solely upon the report of the Public Analyst, the report of the Director, CFL was totally ignored and discarded. In view of the binding nature of sub-section (3) of Section 13 of 1954 Act this could not have been done because the certificate of the Director, CFL containing his report had superseded the

report of the Public Analyst. The report of the Public Analyst therefore having become non-est in the eyes of law for the aforesaid limited purpose, it could not have been relied upon in any manner or for any purpose for convicting the petitioner for offence under Section 16(1)(a)(i) of 1954 Act.

On the aforesaid sole ground this petition is allowed. The conviction as well as the sentence of the petitioner are set-aside. No orders as to costs.

November 6, 2006 **(V.K. Gupta), C.J.**
(rks)